

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 890 & 921

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO HEALTH; ENACTING THE NATUROPATHIC MEDICINE PRACTICE
ACT; CREATING A BOARD; PROVIDING POWERS AND DUTIES; CREATING A
FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Naturopathic Medicine Practice Act".

Section 2. LEGISLATIVE PURPOSE.--The purpose of the
Naturopathic Medicine Practice Act is to protect the public
from the unprofessional, improper, incompetent and unlawful
practice of naturopathic medicine and traditional naturopathy
by providing laws and rules to govern the practice of
naturopathic medicine and traditional naturopathy.

Section 3. DEFINITIONS.--As used in the Naturopathic
Medicine Practice Act:

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underscoring material = new
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1 A. "board" means the board of naturopathic medicine
2 and traditional naturopathy;

3 B. "department" means the regulation and licensing
4 department;

5 C. "doctor of naturopathic medicine", "N.M.D." or
6 "naturopathic physician" means a person licensed to practice
7 naturopathic medicine as an independent primary health care
8 provider and collaborate with other health care providers as
9 necessary;

10 D. "doctor of traditional naturopathy" or "D.T.N."
11 means a person who has satisfied the requirements of the
12 Naturopathic Medicine Practice Act and is licensed to practice
13 traditional naturopathy;

14 E. "homeopathy" means a system of medicine based on
15 the use of infinitesimal doses of medicines capable of
16 producing symptoms similar to those of the disease treated and
17 stimulating the body's intrinsic self-healing, as listed in the
18 homeopathic pharmacopoeia of the United States;

19 F. "hygiene and immunizations" means the use of
20 such preventive techniques as personal hygiene, asepsis, public
21 health prevention and reporting responsibilities and
22 immunizations;

23 G. "medicines of mineral, animal and botanical
24 origin" means medicines derived from animal organs, food, food
25 extracts, tissues and oils, minerals and plants, plant extracts

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1 administered orally or topically, excluding legend drugs, with
 2 the following exceptions: vitamins, minerals, natural
 3 hormones, whole gland thyroid and substances as exemplified in
 4 traditional botanical, homeopathics and herbal pharmacopoeia
 5 and non-drug contraceptive devices;

6 H. "natural hormones" means plant- and glandular-
 7 derived hormones;

8 I. "naturopathic medical school" means a
 9 naturopathic medical education program accredited by a council
 10 on naturopathic medical education or an equivalent federally
 11 recognized accrediting body for the naturopathic medical
 12 profession recognized by the board and which education program
 13 is an institution or part of an institution of higher education
 14 either accredited or a candidate for accreditation by a
 15 regional institutional accrediting agency recognized by the
 16 United States secretary of education;

17 J. "naturopathic medicine" means a system of health
 18 care practice by doctors of naturopathic medicine for the
 19 prevention, diagnosis and treatment of human health conditions,
 20 injuries and diseases that uses education, natural medicines,
 21 homeopathy, naturopathic physical medicine and therapies to
 22 support and stimulate a person's intrinsic self-healing
 23 processes, including, for diagnostic purposes, physical and
 24 orificial examinations, phlebotomy, diagnostic imaging,
 25 electrocardiograms, ultrasound, clinical laboratory tests,

.156965.6

1 examinations and physiological function tests;

2 K. "naturopathic physical medicine" means the use
3 of physical agents of air, water, heat, cold, sound, light,
4 electromagnetism, electricity, soft tissue therapy, joint
5 mobilization and therapeutic exercise in the resolution of
6 human ailments and conditions;

7 L. "traditional naturopathic school" means a
8 facility that provides an educational program in traditional
9 naturopathic training that is approved by the board and
10 accredited by a national or international naturopathic
11 association or recognized by the commission on higher
12 education; and

13 M. "traditional naturopathy" means a system of
14 health care practiced by doctors of traditional naturopathy for
15 the prevention, assessment and evaluation and treatment of
16 human health conditions, injuries and diseases that uses
17 education, natural medicines, homeopathy and therapies to
18 support and stimulate a person's intrinsic self-healing
19 processes, including naturopathic physical medicine.

20 Section 4. SCOPE OF PRACTICE.--

21 A. A doctor of traditional naturopathy may use for
22 preventive and therapeutic purposes the following natural
23 medicines and therapies: food, food extracts, certain
24 medicines of mineral, animal and botanical origin, vitamins,
25 minerals, enzymes, digestive aids, whole gland thyroid, plant

.156965.6

1 homeopathic preparations, topical natural medicines,
2 counseling, biofeedback, dietary therapy, hygiene and
3 naturopathic physical medicine, nutritional and lifestyle
4 counseling and traditional naturopathic physical examinations.

5 B. A doctor of naturopathic medicine may engage in
6 those preventive and therapeutic practices set forth in
7 Subsection A of this section, may prescribe and dispense
8 natural hormones, therapeutic devices, except for those used
9 exclusively by practitioners licensed pursuant to Chapter 61,
10 Article 14A NMSA 1978, and barriers for contraception, and may,
11 for diagnostic purposes, use physical and orificial
12 examinations, diagnostic imaging, electrocardiograms,
13 ultrasound, clinical laboratory tests, phlebotomy, examinations
14 and physiological function tests.

15 Section 5. LICENSE REQUIRED.--Unless licensed pursuant to
16 the Naturopathic Medicine Practice Act, a person shall not:

17 A. advertise, hold out to the public or represent
18 in any manner that the person is licensed to practice
19 traditional naturopathy or naturopathic medicine in the state;
20 or

21 B. maintain, manage or operate a traditional
22 naturopathic school offering education, instruction or training
23 in traditional naturopathy unless the school is approved by the
24 board.

25 Section 6. USE OF TERMS.--A person licensed as a doctor

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1 of traditional naturopathy pursuant to the provisions of the
2 Naturopathic Medicine Practice Act, in all promotion and
3 advertising services to the public, shall use the title "doctor
4 of traditional naturopathy" or the designation of "D.T.N.". A
5 person licensed pursuant to the provisions of the Naturopathic
6 Medicine Practice Act as a doctor of naturopathic medicine may
7 use the title "doctor of naturopathic medicine", "N.M.D." or
8 "naturopathic physician" in all promotional and advertising
9 services to the public. No person may use the terms "doctor of
10 traditional naturopathy", "doctor of naturopathic medicine" or
11 "naturopathic physician" or the initials "N.M.D." or "D.T.N."
12 unless licensed to do so by the board or use the terms
13 "naturopathic doctor", "doctor of naturopathy" or the initials
14 "N.D.".

15 Section 7. EXEMPTIONS.--

16 A. Nothing in the Naturopathic Medicine Practice
17 Act is intended to limit, interfere with or prevent a licensed
18 health care professional from practicing within the scope of
19 that license.

20 B. A person who provides other natural health care
21 services shall not be in violation of any law relating to the
22 healing arts as long as the person does not:

23 (1) perform surgery or any other procedure
24 that punctures the skin of any person;

25 (2) prescribe or administer x-ray radiation to

1 any person;

2 (3) prescribe or administer a legend drug or
3 controlled substance to any person;

4 (4) recommend to any person the discontinuance
5 of a legend drug or controlled substance prescribed by a
6 licensed health care practitioner;

7 (5) willfully diagnose or treat a physical or
8 mental health condition of any person and in so doing cause
9 significant bodily injury, significant physical or mental
10 illness or death; or

11 (6) hold out, state, indicate, advertise or
12 imply to any person that he is licensed, certified or
13 registered under any law relating to the healing arts in this
14 state.

15 C. A person providing health care services who is
16 not licensed, certified or registered under any other provision
17 of law relating to the healing arts prior to providing such
18 services shall disclose to the client in a plainly worded
19 written statement:

20 (1) the fact that he is not licensed,
21 certified or registered under any provision of law relating to
22 the healing arts by this state;

23 (2) the nature of the services to be provided
24 and the theory upon which the services are based; and

25 (3) the degrees, training, experience,

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1 credentials or other qualifications of the practitioner
2 regarding the health care services being provided.

3 D. A person providing health care services who is
4 not licensed, certified or registered under any other provision
5 of law relating to the healing arts by this state shall obtain
6 a signed acknowledgment from the client stating that the client
7 has been provided with the information described in this
8 section, and the signed acknowledgment must be maintained for
9 two years by the person providing the services. The client
10 shall be provided with a copy of the signed acknowledgment.

11 E. Enforcement of the Naturopathic Medicine
12 Practice Act shall be by the superintendent of regulation and
13 licensing pursuant to the Uniform Licensing Act.

14 Section 8. BOARD CREATED--APPOINTMENT--OFFICERS--
15 COMPENSATION.

16 A. The "board of naturopathic medicine and
17 traditional naturopathy" is created.

18 B. The board is administratively attached to the
19 regulation and licensing department.

20 C. The board consists of five members appointed by
21 the governor for terms of three years each. Two members shall
22 be doctors of naturopathic medicine and two members shall be
23 doctors of traditional naturopathy, all of whom shall have been
24 residents of and practiced naturopathic medicine or traditional
25 naturopathy, respectively, in New Mexico for at least three

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1 years immediately preceding the date of their appointment. One
 2 member shall be appointed by the governor to represent the
 3 public and shall be a resident of New Mexico.

4 D. Members shall be appointed for staggered terms
 5 of three years; provided that for initial terms, two members
 6 shall be appointed for three years, two for two years and one
 7 for one year. Terms of board members shall expire on June 30.
 8 A board member shall serve until a successor has been appointed
 9 and qualified. Vacancies shall be filled for the remainder of
 10 the unexpired term in the same manner as the original
 11 appointment.

12 E. A board member shall not serve more than two
 13 consecutive full terms, and a board member who fails to attend
 14 three consecutive meetings, after receiving proper notice,
 15 shall be recommended for removal as a board member unless
 16 excused for reasons established by the board.

17 F. The board shall elect annually from its
 18 membership a chair and other officers as necessary to carry out
 19 its duties.

20 G. The board shall meet at least once each year.
 21 Other meetings may be called by the chair, a majority of board
 22 members or the governor. A simple majority of board members
 23 constitutes a quorum of the board.

24 H. Members of the board may be reimbursed as
 25 provided in the Per Diem and Mileage Act but shall receive no

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1 other compensation, perquisite or allowance. The board may
2 waive any payment of per diem or mileage.

3 Section 9. BOARD--POWERS AND DUTIES.--The board may:

4 A. enforce the provisions of the Naturopathic
5 Medicine Practice Act;

6 B. adopt, publish and file, in accordance with the
7 Uniform Licensing Act and the State Rules Act, all rules
8 necessary for the implementation and enforcement of the
9 provisions of the Naturopathic Medicine Practice Act;

10 C. adopt a code of ethics;

11 D. adopt and use a seal;

12 E. adopt rules implementing continuing education
13 requirements;

14 F. administer oaths and take testimony on any
15 matters within the board's jurisdiction;

16 G. conduct hearings upon charges relating to the
17 discipline of licensees, including the denial, suspension or
18 revocation of a license or the supervision or admonition of a
19 licensee, in accordance with the Uniform Licensing Act;

20 H. issue "specialty" or "certificate of
21 qualification" documents in specialized fields or areas of
22 practice related to naturopathic medicine, based upon education
23 and training;

24 I. grant, deny, renew, suspend, limit or revoke
25 licenses to practice traditional naturopathy or naturopathic

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1 medicine;

2 J. provide for the examination of applicants for
3 licensure as doctor of naturopathic medicine or doctor of
4 traditional naturopathy and establish and collect fees for each
5 type of license;

6 K. keep a record of all examinations held, together
7 with the names and addresses of all persons taking the
8 examinations, and the examination results;

9 L. notify each applicant in writing of the results
10 of an examination within twenty-one days after the results of
11 the examination are available to the board;

12 M. keep a licensee record in which the names,
13 addresses and license numbers of all licensees shall be
14 recorded together with a record of all license renewals,
15 suspensions and revocations;

16 N. provide for the granting and renewal of
17 licenses; and

18 O. keep an accurate record of all its meetings,
19 receipts and disbursements.

20 Section 10. REQUIREMENTS FOR LICENSURE.--The board shall
21 grant a license to practice as a doctor of naturopathic
22 medicine or as a doctor of traditional naturopathy to a person
23 who submits in a timely manner:

24 A. the completed application for licensure on the
25 form provided by the board;

.156965.6

- 1 B. all documentation required by the board;
- 2 C. the required fees;
- 3 D. proof that the applicant has completed a board-
- 4 approved education program in traditional naturopathy or
- 5 naturopathic medicine; and
- 6 E. proof that the applicant has passed an
- 7 examination approved and required by the board.

8 Section 11. GRANDFATHER PROVISION.--

9 A. For one year from the effective date of the

10 rules adopted by the board to implement the Naturopathic

11 Medicine Practice Act, the board shall grant a license to

12 practice as a doctor of naturopathic medicine to a person who

13 submits in a timely manner:

14 (1) the completed application for licensure on

15 the form provided by the board;

16 (2) all documentation required by the board;

17 (3) the required fees;

18 (4) proof that the applicant has completed an

19 education program in naturopathic medicine approved by a

20 council on naturopathic medical education or an equivalent

21 accrediting agency recognized by the board and has passed a

22 nationally accepted examination for doctors of naturopathic

23 medicine; and

24 (5) proof that the applicant has provided

25 naturopathic medicine services in New Mexico for at least three

1 years immediately preceding making the application.

2 B. For one year from the effective date of the
3 rules adopted by the board to implement the Naturopathic
4 Medicine Practice Act, the board shall grant a license to
5 practice as a doctor of traditional naturopathy to a person who
6 submits in a timely manner:

7 (1) the completed application for licensure on
8 the form provided by the board;

9 (2) all documentation required by the board;

10 (3) the required fees; and

11 (4) proof that the applicant has:

12 (a) completed a board-approved education
13 program in traditional naturopathy;

14 (b) provided traditional naturopathy
15 services in New Mexico for at least three years immediately
16 preceding making the application; or

17 (c) passed an examination in traditional
18 naturopathy approved and required by the board.

19 Section 12. EXAMINATIONS.--The board:

20 A. shall establish procedures to ensure that
21 examinations for licensure are offered at least once a year;

22 B. shall establish the deadline for
23 receipt of applications for licensure examinations and other
24 rules relating to the taking and retaking of licensure
25 examinations;

.156965.6

1 C. shall establish the passing grades for
2 its approved examinations;

3 D. may approve, and use as a basis for
4 licensure, the examinations that are used for national
5 certification, including, for doctors of naturopathic medicine,
6 a competency-based national licensing examination administered
7 by a North American board of naturopathic examiners or an
8 equivalent agency recognized by the board;

9 E. shall require each qualified applicant
10 to pass a validated, objective written examination that covers
11 areas that are not included in other examinations approved by
12 the board; and

13 F. shall require that each applicant has completed
14 a board-approved educational program in either traditional
15 naturopathy or naturopathic medicine.

16 Section 13. REQUIREMENTS FOR TEMPORARY LICENSURE.--

17 A. The board may grant a temporary license to a
18 person who:

19 (1) is licensed to practice naturopathic
20 medicine or traditional naturopathy in another state, district
21 or territory of the United States or in a foreign country and
22 who has met all the requirements for temporary licensure to
23 practice in New Mexico, as determined by the board;

24 (2) submits the completed application for
25 licensure on the form provided by the board;

.156965.6

1 (3) submits the required documentation,
2 including proof of adequate education and training, as
3 determined by the board;

4 (4) submits the required temporary licensure
5 application fee; and

6 (5) submits an affidavit stating that the
7 applicant has not been found guilty of unprofessional conduct
8 or incompetence.

9 B. A temporary licensee may engage only in those
10 activities authorized on the temporary license.

11 C. A temporary license may be issued for a
12 period of time not to exceed the time necessary to notify
13 applicants of passage or failure of the next licensure
14 examination.

15 Section 14. LICENSURE BY ENDORSEMENT.--The board may
16 grant a license to practice naturopathic medicine or
17 traditional naturopathy to a person who is licensed as a doctor
18 of naturopathic medicine or a doctor of traditional
19 naturopathy, or its equivalent in another state or a United
20 States territory in good standing and is a graduate of a
21 naturopathic medical school or a traditional naturopathic
22 school if the applicant:

23 A. submits the completed application for licensure
24 by endorsement on the form provided by the board, including
25 proof of licensure in good standing in all states in which the

.156965.6

1 applicant is or has been licensed;

2 B. submits the required documentation as determined
3 by the board;

4 C. submits the required fee for application for
5 licensure by endorsement;

6 D. submits an affidavit stating that the applicant
7 has not been found guilty of unprofessional conduct or
8 incompetence;

9 E. has passed the board-approved examination
10 that demonstrates knowledge of and skill in the application of
11 naturopathic medicine or traditional naturopathy and has since
12 maintained uninterrupted licensure in a state with licensure
13 standards at least equivalent to New Mexico's; and

14 F. has passed a written examination on New Mexico
15 laws and rules that pertain to the practice of naturopathic
16 medicine and traditional naturopathy.

17 Section 15. NATUROPATHIC SCHOOLS AND SPECIALTY OR
18 CERTIFICATE OF QUALIFICATION PROGRAMS.--

19 A. The board shall establish by rule procedures for
20 approval of traditional naturopathic schools, naturopathic
21 medical schools, continuing education and speciality and
22 certificate of qualification education, pursuant to the
23 Naturopathic Medicine Practice Act.

24 B. The board shall not approve traditional
25 naturopathic school educational programs that provide less than
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1 one thousand five hundred classroom hours or ninety semester
2 credits of training and may include instruction in:

- 3 (1) anatomy, physiology and pathology;
- 4 (2) nutritional information that may include
5 food, food extracts, dietary therapy and nutritional
6 counseling;
- 7 (3) medicines of mineral, animal and botanical
8 origin that may include vitamins, minerals, plant substances,
9 homeopathic preparations, topical medicines, enzymes, digestive
10 aids and whole gland thyroid;
- 11 (4) naturopathic physical medicine, bodywork
12 and hygiene;
- 13 (5) biofeedback and lifestyle counseling;
- 14 (6) business, including ethics;
- 15 (7) hydrotherapy;
- 16 (8) first aid and cardiopulmonary
17 resuscitation; and
- 18 (9) traditional naturopathic examination and
19 diagnosis.

20 Section 16. CONTINUING EDUCATION--PROGRAM APPROVAL.--The
21 board shall establish by rule the amount and program criteria,
22 including provider registration, for continuing education
23 required for license renewal.

24 Section 17. LICENSE RENEWAL.--

25 A. A licensee shall renew a license annually by

.156965.6

1 submitting, prior to the date established by the board:

2 (1) the completed application for renewal on
3 the form provided by the board; and

4 (2) the required renewal fee.

5 B. The board may require proof of continuing
6 education and other requirements for renewal.

7 C. A sixty-day grace period shall be allowed for
8 each licensee after the end of the licensing period, during
9 which time the license may be renewed by submitting:

10 (1) the completed application for renewal on
11 the form provided by the board;

12 (2) the required renewal fee; and

13 (3) the required late fee.

14 D. A license not renewed at the end of the grace
15 period shall be considered expired, and the licensee shall not
16 be eligible to practice within the state. The board may extend
17 the reinstatement period and fees in extenuating circumstances,
18 to be determined on a case-by-case basis.

19 Section 18. FEES.--The board shall establish a schedule
20 of reasonable nonrefundable fees not to exceed the following
21 amounts:

22 A. application for licensure, five hundred dollars
23 (\$500);

24 B. application for reciprocal licensure, five
25 hundred dollars (\$500);

.156965.6

1 C. application for temporary licensure, two hundred
2 fifty dollars (\$250);

3 D. examination, not including the cost of any
4 nationally recognized examination, two hundred dollars (\$200);

5 E. annual license renewal, five hundred dollars
6 (\$500);

7 F. late fee for license renewal, one hundred
8 dollars (\$100);

9 G. expired license renewal, seven hundred dollars
10 (\$700);

11 H. annual continuing education provider
12 registration, two hundred dollars (\$200); and

13 I. reasonable fees for necessary administrative
14 expenses.

15 Section 19. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--
16 APPLICATION OF UNIFORM LICENSING ACT.--

17 A. In accordance with the procedures contained in
18 the Uniform Licensing Act, the board may deny a license or
19 revoke or suspend any permanent or temporary license under the
20 Naturopathic Medicine Practice Act upon findings by the board
21 that the licensee or applicant:

22 (1) is guilty of fraud or deceit in procuring
23 or attempting to procure a license;

24 (2) has been convicted of a felony. A
25 certified copy of the record of conviction shall be conclusive

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1 evidence of such conviction;

2 (3) is guilty of incompetence as defined by
3 board rule;

4 (4) is habitually intemperate or is addicted
5 to the use of alcohol or habit-forming drugs or is addicted to
6 any vice to such a degree as to render him unfit to practice as
7 a doctor of naturopathic medicine;

8 (5) is guilty of unprofessional conduct, as
9 defined by board rule;

10 (6) is guilty of a violation of the
11 Controlled Substances Act;

12 (7) has violated a provision of the
13 Naturopathic Medicine Practice Act or rules promulgated
14 by the board;

15 (8) is guilty of failing to furnish the board,
16 its investigators or representatives with information requested
17 by the board;

18 (9) is guilty of willfully or negligently
19 practicing beyond the scope of naturopathic medicine or
20 traditional naturopathy;

21 (10) is guilty of aiding or abetting the
22 practice of naturopathic medicine or traditional naturopathy by
23 a person not licensed by the board;

24 (11) is guilty of practicing or attempting to
25 practice under an assumed name;

.156965.6

1 (12) advertises by means of knowingly false
2 statements;

3 (13) advertises or attempts to attract
4 patronage in an unethical manner prohibited by the Naturopathic
5 Medicine Practice Act or the rules of the board;

6 (14) has been declared mentally incompetent by
7 regularly constituted authorities;

8 (15) has had a license, certificate or
9 registration to practice as a doctor of traditional naturopathy
10 or a doctor of naturopathic medicine revoked, suspended or
11 denied in any jurisdiction of the United States or a foreign
12 country for actions of the licensee similar to acts described
13 in this subsection; or

14 (16) fails, when diagnosing and treating a
15 patient, to possess or apply the knowledge or to use the skill
16 and care ordinarily used by reasonably well-qualified doctors
17 of traditional naturopathy or naturopathic medicine practicing
18 under similar circumstances, giving due consideration to the
19 locality involved.

20 B. Disciplinary proceedings may be instituted by a
21 complaint of any person, pursuant to the Uniform Licensing Act.

22 C. Any person filing a complaint shall be
23 immune from liability arising out of civil action if the
24 complaint is filed in good faith and without actual malice.

25 D. If a licensee is found by the board to have

.156965.6

1 violated the Naturopathic Medicine Practice Act, the licensee
2 shall bear the costs of disciplinary proceedings.

3 Section 20. FUND CREATED.--

4 A. The "naturopathic medicine fund" is created in
5 the state treasury.

6 B. All money received by the board pursuant to the
7 Naturopathic Medicine Practice Act shall be deposited with the
8 state treasurer for credit to the naturopathic medicine fund.
9 The state treasurer shall invest the fund as other state funds
10 are invested, and income from investment of the fund shall be
11 credited to the fund. All balances in the fund shall remain in
12 the fund and shall not revert to the general fund.

13 C. The fund shall be administered by the board, and
14 money in the fund is appropriated by the legislature to the
15 department to meet the necessary expenses incurred in carrying
16 out the provisions of the Naturopathic Medicine Practice Act.
17 Money in the fund shall be expended upon warrants issued by the
18 secretary of finance and administration upon receipt of
19 vouchers signed by the superintendent of the department.

20 Section 21. PENALTIES.--A person who violates a provision
21 of the Naturopathic Medicine Practice Act is guilty of a
22 misdemeanor and upon conviction shall be punished as provided
23 in Section 31-19-1 NMSA 1978.

24 Section 22. CRIMINAL OFFENDER EMPLOYMENT ACT.--The
25 provisions of the Criminal Offender Employment Act shall govern

.156965.6

1 consideration of criminal records required or permitted by the
2 Naturopathic Medicine Practice Act.

3 Section 23. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
4 The board of naturopathic medicine is terminated on July 1,
5 2009 pursuant to the Sunset Act. The board shall continue to
6 operate according to the Naturopathic Medicine Practice Act
7 until July 1, 2010. Effective July 1, 2010, the Naturopathic
8 Medicine Practice Act is repealed.

9 Section 24. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2005.